

(2009) 04 DEL CK 0524
In the Delhi High Court
Case No : Criminal M.C. 2855 of 2001

Abha Tyagi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 1, 14
Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(1), 397(2), 397(3), 401

Citation : (2009) 04 DEL CK 0524

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : D.S. Kohli, for the Appellant; Navin Sharma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This revision petition has been filed by the petitioner aggrieved from the order of framing the charges dated 21.10.1998 by the Metropolitan Magistrate New Delhi as well as against the order dated 26.04.2001 passed in CrI.Rev. No. 17/99 by the Addl. Sessions Judge New Delhi whereby the revision petition filed by the petitioner against the order framing the charge was dismissed.

2. Briefly stating the facts which gave rise to the filing of this petition are that an FIR was registered on 20.02.96 on the basis of a written complaint made by Shri P.C. Sharma, DSP, CBI against C.S. Kherwal on the basis of which premises No. 34, Gautam Apartments, SFS Flats, Gautam Nagar, New Delhi was searched on 18/19.2.96 in connection with the investigation of disproportionate assets against C.S. Kherwal. During the search, whisky approximately 14.925 ml. of foreign brands were recovered contained in 20 bottles, and as per the search memos, revisionist and her sister Chitra and Sushma Tyagi were also staying in the same premises, at the time of alleged recovery.

3. After a charge-sheet was filed against the petitioner and against one C.S.

Kherwal, the Trial Court after hearing the parties and taking into consideration the case of the petitioner that since 4 persons were residing in the house as per the ration card and that she was residing there as the tenant while the house was in the name of Smt. Kapoori Devi, rejected the submission that since 12 bottles were permissible and only 17 bottles were recovered from the joint possession of 4 persons no offence u/s 61/1/14 of Excise Act was disclosed and directed framing of charges against the petitioner also u/s 61/1/14 of the Excise Act. At that time the submission of the petitioner that the joint possession of 4 persons cannot bring home the liability against the petitioner alone it was held that it would be a question which requires going through the evidence.

4. Against this order the petitioner filed a revision petition before the Addl. Sessions Judge which was also dismissed vide order dated 26.04.2001. Before the Addl. Sessions Judge similar arguments were addressed. However, the aforesaid arguments were rejected even by the Addl. Sessions Judge by making the following observations:

I have heard the learned Counsel for the accused and gone through the record, I find that so far as legal proposition to the effect the documents produced by the accused can also be looked into at the time of framing of charge. There is no dispute the court has to see whether a prima facie case to put the accused person on trial is made out or not. Even in case of grave suspicion the charge can be framed as has been held by their Lordships in 2000 SCC CrL. Page 200 that the Court is required to marshal the material on record to find out whether there is sufficient evidence to put the accused persons on trial and not to decide the case finally on the basis of evidence as available. If the evidence procured by the prosecution creates strong suspicion against the accused persons it is sufficient to put them on trial and if the material is not sufficient. They are to be discharged. Now, looking into the present case, with the view I find it has come in the statements of the witnesses that C.S. Kherwal used to come and meet Abha Tyagi. The recording has been effected from this house. Now the possession of the place from where the recovery has been effected is this house only. It can be the trial by the petitioner even in the grounds taken in the revision, it has come that she was a tenant in that house in respect of one room. Now, which was that room is to be seen at the time of trial. I find there is no infirmity in the orders passed by the learned Trial Court and grave suspicion arises. Hence, the revision application is hereby dismissed. File be sent back to the Lower Court for further proceedings on 4.5.2001.

5. Before this Court the Counsel for the petitioner though has filed this petition u/s 482 Cr.P.C. but in fact the petition is like a second revision which in view of Section 397 Cr.P.C. is barred.

6. It is well settled now that to bring a case u/s 482 Cr.P.C. when a bar is expressly provided by Section 397(3) Cr.P.C. the case must be of a sparing nature and it should be shown that mis-carriage of justice has been done as laid down by the Apex Court in the case of Kailash Verma Vs. Punjab State Civil

Supplies Corporation and Another, :

5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* said that the power u/s 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred u/s 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court u/s 397(1) of the Criminal Procedure Code as it is prohibited u/s 397(3) thereof. However, the High Court can entertain a petition u/s 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

7. This issue has also been discussed in the case of *Krishnan and another Vs. Krishnaveni and another*, Some of the observations made in this regard are reproduced hereinbelow for the sake of reference:

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when expeditious trial is conducted.

8. The facts of this case needs to be analysed in the light of the ratio of the aforesaid judgments which circumscribe the powers vested in this Court u/s 482, 483 of Cr.P.C. whenever an attempt is made to again invoke the power of revision though in the garb of petition under Sections 482, 483 in view of the bar created u/s 397(3) Cr.P.C. once the petitioner has already availed the remedy of

revision in respect of his grievance by approaching the Sessions Court. The ratio of the judgment, as quoted above, makes it abundantly clear that while the powers vested in this Court under Sections 482, 483 Cr.P.C. are wide enough to still interfere in a case where even the revisional jurisdiction has already been invoked by the Sessions Court on a petition filed by the petitioner u/s 397(1) of the Cr.P.C. but it has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of Court or where the required statutory procedure has not been complied with or where there is failure of justice or that the order passed or sentence imposed requires correction. This Court has already taken the aforesaid view in CrI.M.C. 4024/2008 titled as Gajraj Singh Tomar v. State and Ors. decided on 02.02.2009.

9. Now coming to the factual matrix of this case, I find that the petitioner was admittedly an occupant of the premises from where recovery of 19 bottles of foreign liquor has been made. The question as to whether the petitioner was not in joint possession of the property or that only one room was under her tenancy and was not part of the house from where the liquor has been seized are all questions which can be sorted out only when evidence will be recorded. It is well settled that at the stage of framing of charges only a prima facie view of the matter is to be taken. At that stage the Court is not required to take into consideration the defence unless and until it is borne out from the record which is not the case.

10. The petitioner has already availed revisional remedy which was available to her but was not successful. Nothing material has been brought to our notice resulting in mis-carriage of justice or which requires interference by this Court to do any substantial justice between the parties. Merely because petitioner is a Government servant does not absolve her of the responsibilities if she was guilty of commission of offence. It is only after the recording of evidence this question would be decided as to whether she is guilty of offence or not. In these circumstances, I find no infirmity in the order of Metropolitan Magistrate dated 21.10.1998 the order directing framing of the charges as well as the order of the Addl. Sessions Judge dated 26.04.2001.

11. Accordingly, the petition filed by the petitioner u/s 482 Cr.P.C. is dismissed. Let the parties now appear before the Trial Court on the date already fixed. Trial Court will proceed with the matter in accordance with law. TCR be sent back to MM concerned through a special messenger. Interim orders, if any, stands vacated.